

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

The Estate of Anthony Causi,

Plaintiff,

v.

Bigplay LLC,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff The Estate of Anthony Causi (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against Defendant Bigplay LLC (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.

2. Plaintiff Anthony Causi, now deceased, provided photojournalism goods and services whereby Plaintiff owns the rights to these images which Anthony Causi licensed to online and print publications.

3. Defendant owns and operates a website known as www.bigplay.com (the “*Website*”).

4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff The Estate of Anthony Causi is located at 1 Short Drive, Oyster Bay in Nassau County, New York.

6. Upon information and belief, Defendant Bigplay LLC, is an Ohio limited liability

1 company with a principal place of business at 29215 Osborn Road, Bay Village in Cuyahoga
2 County, Ohio and is liable and responsible to Plaintiff based on the facts herein alleged.

3 **JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction over the federal copyright infringement
5 claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

6 8. This Court has personal jurisdiction over Bigplay LLC because it maintains its
7 principal place of business in Ohio.

8 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Bigplay LLC does business
9 in this Judicial District and/or because a substantial part of the events or omissions giving rise to
10 the claim occurred in this Judicial District.

11 **FACTS COMMON TO ALL CLAIMS**

12 10. Anthony Causi was a professional photographer by trade who is the legal and
13 rightful owners of photographs which Plaintiff licenses to online and print publications.

14 11. Anthony Causi had invested significant time and money in building Plaintiff's
15 photograph portfolio.

16 12. Anthony Causi obtained active and valid copyright registrations from the United
17 States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many
18 others are the subject of pending copyright applications.

19 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
20 protectable copyright interests.

21 14. Upon information and belief, Bigplay LLC is the registered owner of the Website
22 and is responsible for its content.

23 15. Upon information and belief, Bigplay LLC is the operator of the Website and is
24 responsible for its content.

25 16. The Website is a popular and lucrative commercial enterprise.
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1 17. The Website is monetized in that it contains paid advertisements and, upon
2 information and belief, Defendant profits from these activities.

3 18. The Website is monetized in that sells merchandise to the public and, upon
4 information and belief, Defendant profits from these activities.

5 19. Furthermore, Defendant's social media presence, including but not limited to its
6 Facebook, Twitter, and Instagram accounts, expands Defendant's online presence which in the
7 aggregate have roughly 430,500 connections via online users.

8 20. Upon information and belief, the Defendant's aforementioned online footprint
9 promotes traffic to the Website whereby Defendant financially benefits.

10 21. On April 10, 2019, Anthony Causi, now deceased, authored a photograph of Major
11 League Baseball Player Travis d'Arnaud (the "*Photograph*"). A copy of the Photograph is attached
12 hereto as Exhibit 1.

13 22. Upon Anthony Causi's death and by way of legal succession to Anthony Causi's
14 interest in the Photograph, Plaintiff is now the rightful owner of decedent's images including but
15 not limited to the aforementioned Photograph.

16 23. Plaintiff applied to the USCO to register the Photograph on or about June 25, 2019
17 under Application No. 1-7822752253.

18 24. The Photograph was registered by the USCO on June 25, 2019 under Registration
19 No. VA 2-161-946.

20 25. On April 29, 2019, Plaintiff observed the Photograph on the Website in a story
21 dated April 28, 2019. A copy of the screengrab of the Website including the Photograph is attached
22 hereto as Exhibit 2.

23 26. The Photograph was displayed at URL: [https://www.bigplay.com/new-york-mets-
24 designate-catcher-travis-darnaud-for-assignment/](https://www.bigplay.com/new-york-mets-designate-catcher-travis-darnaud-for-assignment/).

25 27. The Photograph was stored at URL: [https://www.bigplay.com/wp-
26](https://www.bigplay.com/wp-)

1 <content/uploads/2019/04/travis-darnaud-1.jpg>.

2 28. Without permission or authorization from Plaintiff, Defendant volitionally selected,
3 copied, stored and/or displayed Plaintiff's copyright protected Photograph as is set forth in Exhibit
4 "1" on the Website.

5 29. Upon information and belief, the Photograph was copied, stored and displayed
6 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
7 "*Infringement*").

8 30. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
9 tangible medium of expression that was sufficiently permanent or stable to permit it to be
10 communicated for a period of more than a transitory duration and therefore constitutes a specific
11 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th
12 Cir. 2007).

13 31. The Infringement is an exact copy of the entirety of Plaintiff's original image that
14 was directly copied and stored by Defendant on the Website.

15 32. Upon information and belief, Defendant takes an active and pervasive role in the
16 content posted on its Website, including, but not limited to copying, posting, selecting,
17 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

18 33. Upon information and belief, Defendant directly contributes to the content posted
19 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
20 including but not limited to Dan Starr who provides contributions to Defendant's Website in the
21 form of original content and whereby Defendant's governing submission policies, at the time of
22 the infringement, viewable on Defendant's Website under the designation "BIGPLAY
23 WRITING/EDITING OPPURTUNITIES Policy" ("*Policy*") suggests the author of the
24 Infringement has the official designation of "Editor" ("*Employees*"). In addition, the foregoing
25 Policy explicitly states that submissions are reviewed by Defendant prior to publication on
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1 Defendant's Website.

2 34. A PDF printout of the Defendant's Policy is attached hereto as Exhibit 3.

3 35. Upon information and belief, at all material times the Employees were acting within
4 the course and scope of their employment when they posted the Infringement.

5 36. Upon information and belief, at all material times the Employees were acting within
6 the course and scope of their agency when they posted the Infringement.

7 37. Upon information and belief, Defendant provided monetary compensation for the
8 articles posted by the Employees as mentioned in the Policy.

9 38. Upon information and belief, the Photograph was willfully and volitionally posted
10 to the Website by Defendant.

11 39. Upon information and belief, Defendant is not registered with the United States
12 Copyright Office pursuant to 17 U.S.C. §512.

13 40. Upon information and belief, Defendant was aware of facts or circumstances from
14 which the determination regarding the Infringement was apparent. Defendant cannot claim that it
15 was not aware of the infringing activities, including the specific Infringement which forms the
16 basis of this complaint, since such a claim would amount to only willful blindness to the
17 Infringement on the part of Defendant.

18 41. Upon information and belief, Defendant actively reviews, critiques, and publishes
19 the Employees articles as mentioned in the Policy.

20 42. Upon information and belief, Defendant actively enforces and/or enforced the
21 "Terms of Use & DCMA" ("Terms") by providing an email: dcma@bigplay.com for reporting
22 copyright infringements. The Terms of Defendant's Website can be located via Wayback archive
23 capture at the following URL:
24 <https://web.archive.org/web/20190402095834/https://www.bigplay.com/terms/>.

25 43. Upon information and belief, Defendant engaged in the Infringement knowingly
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1 and in violation of applicable United States Copyright Laws.

2 44. Upon information and belief, Defendant has the legal right and ability to control
3 and limit the infringing activities on its Website and exercised and/or had the right and ability to
4 exercise such right.

5 45. Upon information and belief, Defendant monitors the content on its Website.

6 46. Upon information and belief, Defendant has received a financial benefit directly
7 attributable to the Infringement.

8 47. Upon information and belief, the Infringement increased traffic to the Website and,
9 in turn, caused Defendant to realize an increase in its advertising revenues and/or merchandise
10 sales.

11 48. Upon information and belief, a large number of people have viewed the unlawful
12 copies of the Photograph on the Website.

13 49. Upon information and belief, Defendant at all times had the ability to stop the
14 reproduction and display of Plaintiff's copyrighted material.

15 50. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential
16 market for the Photograph.

17 51. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

18 **FIRST COUNT**

19 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

20 52. Plaintiff repeats and incorporates by reference the allegations contained in the
21 preceding paragraphs, as though set forth in full herein.

22 53. The Photograph is an original, creative work in which Plaintiff owns valid
23 copyright properly registered with the United States Copyright Office.

24 54. Plaintiff has not licensed Defendant the right to use the Photograph in any manner,
25 nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

1 55. Without permission or authorization from Plaintiff and in willful violation of
2 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
3 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby
4 violating one of Plaintiff's exclusive rights in its copyrights.

5 56. Defendant's reproduction of the Photograph and display of the Photograph
6 constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co.,*
7 *Inc.*, 499 U.S. 340, 361 (1991).

8 57. Plaintiff is informed and believes and thereon alleges that the Defendant willfully
9 infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
10 they used, published, communicated, posted, publicized, and otherwise held out to the public for
11 commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent
12 or authority, by using it in the infringing article on the Website.

13 58. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
14 to an award of actual damages and disgorgement of all of Defendant's profits attributable to the
15 infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at
16 Plaintiff's election, an award for statutory damages against Defendant in an amount up to
17 \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c).

18 59. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
19 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
20 pursuant to 17 U.S.C. § 505 from Defendant.

21 60. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
22 to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

23 **JURY DEMAND**

24 61. Plaintiff hereby demands a trial of this action by jury.
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PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: February 11, 2022

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